



## Legal Update

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March 2019

***Based on the totality of the circumstances, the SJC holds that the police were not justified entering a dwelling without a warrant under the emergency aid exception!***

***Commonwealth v. Jose Arias***, SJC No. 12510, (2019): Lawrence police received a tip from an unnamed 911 caller who reported that she saw two, “Spanish guys” “with a gun,” walking towards an apartment building at “7 Royal Street.” The caller overheard one of the men “load the gun” before entering the apartment building and she was “really freaked out” because she lived at that address. The caller described to the 911 dispatcher what the men were wearing. The caller also said “there’s always a little movement in that building,” but she was “not really sure what’s going on.” Recently, the Lawrence police department was investigating “a rash of home invasions” around the area and had “received information” that “a crew out of New York,” was responsible for the crimes. Lawrence police showed up at the Royal Street apartments after receiving a dispatch. The police approached the rear of the building while some of the officers were situated at the front door. After obtaining further information about the layout of the building, the police spoke with the caller. The caller told police that she saw three men, “enter the front door of apartment 5A easily because they probably had a key.” When no one answered at apartment 5A, the police forcibly entered out of concern that a home invasion was taking place and there were “possibly armed subjects inside, as well as victims.” Once inside the apartment, police found no one. However, police saw

narcotics, a scale, and “thousands” of plastic bags on the floor while conducting a protective sweep. The police continued down the interior back stairs looking for armed subjects or victims, where they found the defendant and two other men hiding in the basement. The men were arrested and charged.

The defendant filed a motion to suppress which was allowed and the Commonwealth appealed, arguing that the police had probable cause to enter defendant’s apartment building without a warrant, or in the alternative, under the *emergency aid doctrine*. The Appeals Court reversed the motion judge’s findings and found the warrantless entry into the dwelling was justified under the *emergency aid exception*. The SJC heard the case on further appeal.

**Conclusion:** The SJC held that based on the facts in this case, the emergency aid exception did not apply because an emergency did not exist and police lacked an objectively reasonable basis to believe that a home invasion was in progress, or that some type of safety risk was posed to potential victims inside the apartment.

**1<sup>st</sup> Issue: Did the police make a justified warrantless entry into the apartment under the *emergency aid exception*?**

The SJC held that the police were not justified entering the apartment without a warrant under the *emergency aid exception*. “Whether an emergency exists is dependent upon an evaluation of the circumstances as they appear, at the time, to the police.” See *Commonwealth v. Townsend*, 453 Mass. 413 (2009). “Whether the police officers’ response to their evaluation of the circumstances was reasonable and lawful, are matters that must be evaluated in relation to the scene as it could appear to the officers at the time, not as it may seem to a scholar after the event with the benefit of leisured retrospective analysis.” *Id.*

There are two strict requirements that must be met in order to permit entry under the emergency aid exception to the warrant requirement:

- **First**, the police need an objectively reasonable basis to believe that an emergency exists at the time of entry.
- **Second**, once police enter the apartment, they must be reasonable under the circumstances and not exceed the scope of the search. *Commonwealth v. Entwistle*, 463 Mass. 205, 213 (2012).

If these two conditions are met, then warrantless entry inside the home is permissible.

Here, the SJC found that the police did not have an objectively reasonable basis to believe an emergency existed. Although officers do not need an ironclad proof of a likely, serious, life-threatening injury in order for an entry, it must be reasonable. The entry is made "to prevent harm stemming from a dangerous condition, not to investigate criminal activity." *Commonwealth v. Tuschall*, 476 Mass. 581, 585 (2017). Once police have gained entry inside a dwelling, their conduct must be reasonable and "strictly circumscribed" by the circumstances of the emergency that justified entry. See *Mincey v. Arizona*, 437 U.S. 385, 393 (1978). A protective sweep made pursuant to the *emergency aid exception* "must be limited in scope to its purpose," *Commonwealth v. Peters*, 453 Mass. 818, 823 (2009), e.g., to prevent imminent harm, protect life or property, or provide aid to one who is injured. Additionally, the officers' conduct "may not be expanded into a general search for evidence of criminal activity." If police no longer have an objectively reasonable basis to believe that an emergency exists, it is unreasonable to continue searching. See *Mincey v. Arizona*, 437 U.S. 385, 393 (1978). If, after completing a protective sweep, officers continue to have an objectively reasonable basis to believe that an emergency exists, a subsequent sweep that is limited to the scope of the emergency may be justified. See *Entwistle*, *supra* at 215-219.

When police arrived on scene after receiving the 911 call, they saw and heard no signs of disturbance, and detected no signs of forced entry. The doors to apartment 5A were closed and intact. Furthermore, the 911 caller relayed that the men had entered the building "easily." Other residents in the multi-unit dwelling indicated they had not seen or heard anything suspicious or out of the ordinary. There were no sounds coming from apartment 5A. Although police observed a man matching the description at the back of the building, their observations did not transform the situation into an emergency. There was no indication that the man was injured, in need of emergency assistance, armed, or about to harm others, or that he had harmed others. Regardless of whether the officers had sincerely held beliefs as to the existence of an armed home invasion or hostage situation, their subjective beliefs at the scene cannot justify a search under the emergency aid exception. The circumstances at the time of entry here did not establish a reasonable basis to believe that an emergency existed in unit 5A. See *Tuschall*, *supra* at 585-587. Based on all the facts, the warrantless search of the dwelling was not justified under the emergency aid exception.

**2<sup>nd</sup> Issue: Did police have probable cause and exigent circumstances to enter the apartment without a warrant?**

"In the absence of a warrant, two conditions must be met in order for a nonconsensual entry to be valid" under the *exigent circumstances exception*: (1) "there must be probable cause" and (2) "there must be exigent circumstances." *Commonwealth v. DeJesus*, 439

Mass. 616, 619 (2003). Essentially, when probable cause exists to believe that a crime has occurred, is occurring, or will occur imminently, a warrantless entry is justified only if exigent circumstances also are present. For exigent circumstances to exist, police must have "reasonable grounds to believe that obtaining a warrant would be impracticable under the circumstances." *Commonwealth v. Figueroa*, 468 Mass. 204, 213 (2014). Impracticability arises in the context of the exigent circumstances doctrine when the delay caused by obtaining a warrant would create "a significant risk" that "the suspect may flee," "evidence may be destroyed," or "the safety of the police or others may be endangered." *Commonwealth v. Tyree*, 455 Mass. 676, 685-691 (2010).

The SJC first concluded that there was no exigency and that police lacked objectively reasonable grounds to believe that residents of apartment 5A were in danger. When police arrived on scene, there were no indications of violence or forced entry into apartment 5A. The police also were unaware that a resident or victim inside apartment 5A was in danger. None of the residents from apartment 7A had seen or heard anything suspicious. Although the police saw one of the defendants at the rear of the building, there was no indication that he, the police, or anyone else was at risk of imminent injury. Furthermore, the police had surrounded the building which certainly minimized the risk of the suspect fleeing. Based on the facts of this case, the SJC found that police lacked a reasonable basis to believe that there was an armed home invasion or hostage situation or other exigency. The investigation of a crime, even a serious crime such as an armed home invasion, does not itself establish an exigency. See *Mincey*, 437 U.S. at 394

The SJC also concluded that the police did not have probable cause to believe criminal conduct was at hand because they did not find any corroborating evidence to bolster the 911 caller's reliability. After reviewing the circumstances the police encountered at the scene, the SJC found that the caller provided conflicting information. Initially, the caller reported that she saw two men "going up to the building" located at the specified address, and that she heard one of the men load the gun before he and his companion entered the building. Later, the caller said there were three men. The caller also commented that the men talked calmly before entering the building, which they entered "easily" because they likely had a key. Although the caller said that she had never seen the men before, she acknowledged that she was new to the neighborhood and was unsure of what the men were doing. The caller's description of the men who left the building also conflicted with the description the caller had provided to the police. When evaluating all the factors present in this case and the lack of independent, corroborating evidence from police, the reliability of the 911 caller's testimony was insufficient to establish probable cause under art. 14.